

## **REMARKS**

Applicant has reviewed and considered the Final Office Action mailed on October 24, 2008, and the references cited therewith. Claims 1, 5-10, and 21-30 are pending in the present application. Claims 2-4 and 11-20 are cancelled without prejudice or disclaimer. Claims 1 and 5-9 are amended. Claims 21-30 are added. Support for the claim amendments and new claims can be found in the claims as originally filed, and in the Applicant's patent application in paragraphs 16-18 and 24-26. Reconsideration and full allowance of the claims are respectfully requested in view of the following remarks.

### **Claim Rejections – 35 U.S.C. § 112**

Claims 19 and 20 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claims 19 and 20 are cancelled, rendering this rejection moot.

### **Claim Rejection – 35 U.S.C. § 103; Claims 1-3, 5, 6, 10-13, and 17-20**

Claims 1-3, 5, 6, 10-13, and 17-20 were rejected as obvious over International Publication Number WO 00/59424 A1 (hereinafter "Johnson") in view of U.S. Patent 5,039,491 (hereinafter "Saaski"). Claims 2, 3, 11-13, and 17-20 are cancelled, rendering the rejection against these claims moot. With respect to the remaining claims, this rejection is respectfully traversed.

Applicant has amended claim 1, which includes features that are neither taught nor suggested by Johnson or Saaski, alone or in combination. Therefore, amended claim 1, and all claims dependent therefrom, are allowable.

In addition, combining Johnson and Saaski in the manner proposed in the Office Action renders Saaski inoperable and unsatisfactory for its intended purpose. In particular, Saaski teaches an optical oxygen sensor that uses light to measure the partial pressure of oxygen in a blood sample (see, e.g., column 9, line 57 - column 10, line 7; column 11, lines 3-49; and Figures 15, 17, and 19). The Office Action proposes combining Saaski's oxygen sensor with Johnson's vacuum assisted closure device.

(Office Action dated October 24, 2008, page 5). However, the application of vacuum (i.e., negative pressure) to Saaski's oxygen sensor would catastrophically affect the partial pressure measurements made by the sensor, and therefore render Saaski inoperable and unsatisfactory for its intended purpose of measuring oxygen content. Thus, Johnson and Saaski may not be combined in the manner proposed in the Office Action. Reconsideration and favorable action are requested.

Claim Rejection – 35 U.S.C. § 103; Claims 4, 7-9, and 14-16

Claims 4 and 14 are rejected as obvious over Johnson in view of Saaski as applied to claims 1 and 11, and further in view of U.S. Patent 6,017,440. Claims 7 and 15 are rejected as obvious over Johnson in view of Saaski as applied to claims 6 and 11, and further in view of U.S. Patent 5,855,570. Claims 8 and 16 are rejected as obvious over Johnson in view of Saaski as applied to claims 6 and 11, and further in view of U.S. Patent 6,398,767. Claim 9 is rejected as obvious over Johnson in view of Saaski as applied to claim 6, and further in view of U.S. Patent 4,955,391.

Claims 4 and 14-16 are cancelled, rendering the rejection against these claims moot. Remaining claims 7-9 are allowable by virtue of their dependency on amended claim 6. Reconsideration and favorable action are requested.

New Claims 21-30

Applicant has added new claims 21-30. No anticipation or *prima facie* obviousness rejection may be stated against new claims 21-30.

**CONCLUSION**


Applicant respectfully submits that pending claims 1, 5-10, and 21-30 are in condition for full and immediate allowance and the same is respectfully requested.

This Response is being filed as part of a Request for Continued Examination (RCE). Although Applicant believes that no additional fee is due beyond those made with the RCE, to provide for the possibility that Applicant has overlooked the need for a fee, including a fee for an extension of time under 37 C.F.R. 1.136(a), the Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 19-3140 of Sonnenschein Nath & Rosenthal LLP.

The Examiner is invited to call the undersigned at the below-listed telephone number if, in the opinion of the Examiner, such a telephone conference would expedite or aid the prosecution and examination of this application. Any communication initiated under this paragraph should be deemed an "Applicant-Initiated Interview."

Date: 1/26/09

Respectfully submitted,



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